IN THE

Supreme Court of the United States

October Term, 1966

No. [redacted] 19

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT STATE OF FLORIDA

BRIEF FOR PETITIONERS

IRMA ROBBINS FEDER
110 N. Hibiscus Drive
Miami Beach, Florida 33139

JOSEPH C. SEGOR
345 N. W. 1st Street
Miami, Florida
Of Counsel

RICHARD YALE FEDER
250 N. E. 17th Terrace
Miami, Florida 33132

TOBIAS SIMON
c/o A.C.L.U. of Florida
223 S. E. 1st Street
Miami, Florida 33131
Attorney for Petitioners

INDEX

TABLE OF CITATIONS

TABLE OF CITATIONS (cont.)

STATUTES

BLANK
PAGE

IN THE

Supreme Court of the United States

October Term, 1966

No. 506

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT STATE OF FLORIDA

BRIEF FOR PETITIONERS

INTRODUCTION

The Petition filed herein is symbolized by "P", the Appendix to the Petition by "PA", the Response to the

Petition by "RP", and the printed record by "R". Certain portions of the Petition are incorporated herein by reference to save printing expenses in view of the fact that the case has been placed on the summary calendar and "extended argument" is not required.

All emphasis in quoted material is supplied by counsel unless stated to the contrary.

OPINIONS BELOW

The Judgment of Affirmance of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, affirming jury verdicts and judgments of conviction, is unreported (R. 75, PA. 1; #10816, No. 13, 1964). The opinion of the Florida District Court of Appeal, denying common law certiorari to review the decision of the Circuit Court, is reported at 175 So. 2d 249 (R. 90, PA. 8); the order denying petition for rehearing thereon is unreported (R. 92, PA. 9).

JURISDICTION

The final judgment of the Florida District Court of Appeal, upon its opinion of May 11, 1965, was entered on denial of the petition of rehearing on June 7, 1965 (R. 90-92, PA. 8-9). The Petition for a writ of certiorari was filed in this Court on August 30, 1964, and was granted on January 31, 1966 (R. 93). The jurisdiction of this Court rests on Title 28, United States Code, §1257(3). The Petition sets forth relevant Florida law (P. 3), and the respondent-State of Florida "concedes that appropriate jurisdiction to entertain this proceeding is vested in this court" (sic, RP. 2).

QUESTION PRESENTED

DOES THE ARREST AND CONVICTION OF A GROUP OF NEGROES FOR VIOLATING A STATE STATUTE PROHIBITING "TRESPASS . . . WITH A MALICIOUS AND MISCHIEVOUS, INTENT", WHEN BASED SOLELY ON SAID NEGROES' PEACEFUL CONGREGATION IN FRONT OF THE COUNTY JAILHOUSE FOR THE PURPOSE OF PROTESTING THE SEGREGATED FACILITIES WITHIN THE JAIL AS WELL AS THE PREVIOUS ARREST OF OTHER ANTI-SEGREGATION DEMONSTRATORS, DENY SAID NEGROES' RIGHTS OF FREE SPEECH, ASSEMBLY, PETITION, DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

STATUTE INVOLVED

The pertinent section of the trespass statute involved, Florida Statute §821.18, Comp. Gen. Laws 1927, §7391, states as follows:

> "Every trespass upon the property of another, committed with a malicious and mischeivous intent, the punishment of which is not specially provided for, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars."

STATEMENT OF THE CASE

Proceedings Below

(See also P. 4-5, 8-9)

Petitioners seek reversal of the decision of the Florida District Court of Appeal upholding the Circuit Court's affirmance of their trespass convictions by the County Judge's Court, convictions for participation in a peaceful and reasonable civil rights demonstration.

Petitioners were 32 members of a group of 107 Negroes arrested on September 16, 1963 in front of the Leon County jailhouse in Tallahassee, Florida, under Florida Statute §821.18, which prohibits "trespass . . . committed with a malicious and mischievous intent" (R. 2-3, 52).

Although the evidence adduced at trial (R. 42-75, summarized infra) conclusively established petitioners' peaceful assembly to protest the segregated jail, other segregated public facilities, and the prior arrest of other anti-segregation peaceful demonstrators, the jury found all guilty and the trial court thereupon entered judgments of conviction and sentences (R. 1-2, 76).

The Leon County Circuit Court affirmed the convictions and sentences on November 13, 1964 (R. 75, PA. 1) and the District Court of Appeal, First District of Florida, denied a petition for a common law writ of certiorari on May 11, 1965 (R. 82, 90; PA. 8), as well as a petition for rehearing on June 7, 1965 (R. 91-92; PA. 9).

Petitioners asserted, at all stages of the proceedings below, that the Florida trespass statute was unconstitutionally applied in the case at bar in view of their rights of free speech, assembly, petition, due process of law and equal protection of the laws under the Fourteenth Amendment to the United States Constitution. Petitioners' Motion to Quash the Informations (R. 2), Motions for Directed Verdict (R. 49, 65) and Motion for New Trial were denied by the trial court (R. 4, 49-50, 65), which ruled that **Edwards v. South Carolina**, 1963, 372 U. S. 229, 83 S.Ct. 680, 9 L.Ed. 2d 697, was inapplicable (R. 49). The Circuit Court agreed that petitioners' rights were not abridged and held the **Edwards** case "not controlling or persuasive" (R. 78, 81; PA. 3, 7).

The Petition for a Common Law Writ of Certiorari, filed in the Florida District Court of Appeal, again specifically raised the Federal question involved (R. 82-89, especially 86-88), and asserted that the Circuit Court's affirmance and opinion "deviated from" and "was contrary to essential requirements of law" (R. 83, 87-89), as did the Petition for Rehearing (R. 91-92). The Florida District Court's per curiam denial of certiorari (and petition for rehearing) effectively affirmed the judgments below and held petitioners' constitutional rights not violated (R. 90-92; PA. 8, 9; see **Dresner v. City of Tallahassee**, Fla. 1964, 164 So. 2d 208, 210, **Robinson v. State**, Fla. 1961, 132 So. 2d 3, 5, and **Allen v. Miami**, Fla. App. 1962, 147 So. 2d 566, 567).

It should be noted that the recent **Cox v. Louisiana** cases, 1965, 379 U. S. 536 and 559, 85 S.Ct. 453 and 476, 13 L.Ed. 2d 471 and 487, were decided by this Court shortly after petitioners' main brief in support of cer-

tiorari was filed in the Florida District Court of Appeal; although the Cox cases were not noted in respondent's brief therein, they were fully discussed in petitioners' reply brief and explicitly cited in the Petition for Rehearing (R. 91-92).

Summary of Evidence

(See also P. 507)

The instant summary does not conflict with the facts contained in the Circuit Court's opinion (R. 75; A. 1) but contains more details. All "32 cases . . . [were] tried at one time" in the County Judge's Court (R. 70-71). Six witnesses testified before the jury, three on each side: Sheriff Joyce, Deputy Sheriff Dekle and Deputy Sheriff Dawkins appeared on behalf of the State; three student demonstrators, Misses Walls, Mays and Wright, testified on behalf of defendants (petitioners in this Court). The evidence adduced at trial was not in conflict concerning the material facts as shown by the resume of all testimony which follows.

On September 15, 1963, all or some of petitioners met on the Florida A & M University campus to discuss the arrest the night before of other students for picketing and otherwise peacefully protesting segregation in certain downtown Tallahassee movie theatres; the group also discussed police brutality that "was administered to the helpless . . . and unarmed girls" at the prior demonstrations (R. 52, 56). It was decided that the next morning the group would walk from the campus to the Leon County Jailhouse (where some of the arrested demonstrators were being held, R. 19, 41-42) "out of protest

of a segregated jail, as well as the theatres and other public facilities" and also to protest the police brutality (R. 52-60).

On September 16, 1963 around 9 a.m., about 250 students, including petitioners, met at the campus and "walked in a peacful group . . . on the sidewalks" the mile or so to the jail. The "orderly group" did not disturb people on the way, and carried "no bats, no knives, blackjacks or anything of that sort" (R. 53), nor even any signs (R. 60).

Petitioner Walls, who had studied "[c]ivics and history", was "taking a government course" at Florida A & M at the time, and was familiar with American history and great documents, including the Constitution and Declaration of Independence (R. 51-52), testified that the group did not go to the jail "with the intent of violating any laws" or damaging property, etc., but went "only in protest," "strictly in protest of segregated facilities"; she correctly felt she "had a right to . . . make this protest" (R. 55-56, see also 58).

The orderly unarmed students arrived at the jail around 9:30 or 10:00 o'clock, and walked up the driveway onto "the grassy section out of the way of the cars . . . parked there" (R. 54, 13).

Deputy Sheriff Dekle, who saw the 175 or 200 demonstrators approach (R. 7, 15), testified that they never came any closer to the jail building than 1½ or 2 feet from the bottom step of four steps leading from the driveway to the jail door (R. 10). Advising the group that they could not block the jail entrance, Dekle asked

them to go back to about the middle of the driveway and they did. They "did obey" his request, moving as fast as 200 people could move, and never came "close to the jail after that time" (R. 10, 14-15).

Petitioner Wall stated that there was not "any protest" at Dekle's request and that they all "dropped back peacefully" (R. 54).

The demonstrators never went onto the jailhouse steps, leastwise inside the jail. They stood (for the half hour of the peaceful protest, R. 55) on part of the driveway, adjacent parking lots, and some grassy areas in front of the jail building (R. 14, 27).

According to Deputy Sheriff Dekle, nobody got "pushed or shoved . . . or hurt", and he saw no one "carrying any sticks or stones or bricks or bats or anything like that." The demonstrators were merely doing "their own little dance . . . jumping up and down and singing and clapping their hands" (R. 11), singing the "Freedom" song among others (R. 17). There was also some hollering back and forth between the peaceful protestors and the "4 or 5 colored females in one of . . . [his] juvenile cells . . . being held in contempt of court . . . in connection with the demonstration that had taken place in front of the Florida State Theatre a few nights before" (R. 9, 18-19). The jail segregates all prisoners on the basis of race as well as sex (R. 19).

According to Deputy Sheriff Dekle, the demonstrators did not obstruct the jail entrance, nor interfere with jail business (R. 14, 16). People could go in and out of the jail (R. 19). Although vehicles could not drive up

to the door, Dekle never asked the demonstrators to go back any further (R. 21). Other testimony established that the Sheriff and Deputy who arrived later had no trouble parking where they desired and going into the jail (R. 36, 43), and that no other vehicles attempting to enter or leave had any trouble (R. 55, 48).

Sheriff Joyce was not at the jail when the demonstrators arrived. He received a telephone call about it (R. 10, 35) while he was in a conference with one of the Circuit Judges and five or six attorneys in the Circuit Judges' Chambers discussing a hearing about to take place (R. 27) in the case of "Tallahassee State Theatres, Inc. v. Due", contempt of court charges and a civil suit brought against the Sheriff and others for depriving Negroes of their constitutional rights to be admitted to the downtown movie theatres free from state-enforced or encouraged racial discrimination and to peacefully protest therefore (R. 35; these cases are discussed in Argument, infra). Sheriff Joyce admitted that this case he was discussing "arose out of a demonstration" and that he "assumed . . . [the instant demonstration at the Leon County jail] was in protest of what had been done . . . [and] never found any reason to learn to the contrary" (R. 35-36).

After receiving the call, Sheriff Joyce ordered his office "to call the city police department, Florida highway patrol and all of our men and have them go directly to the jail" (R. 27). The Sheriff then drove to the jail and finding some of the officers he had ordered already there, he "parked . . . and immediately went into the jail to make an inquiry to see if anyone had come into the jail, or if everything was in order in the jail." Find-

ing "[n]o disturbance inside", he gave orders to his jailers, deputies and officers and "then came outside" (R. 27). Sheriff Joyce watched the demonstrators "singing, chanting . . . [for] 5 or 10 minutes maybe" (R. 28). The group had "some fluctuation moving forward and backward." The Sheriff "asked them at one time to move back and they generally went along with that" (R. 34).

After watching for 5 or 10 minutes, Sheriff Joyce went over to 2 "student leaders" he recognized, petitioner Blue and Alton White (who was not a defendant at trial and is not a petitioner herein) (R. 28-29). The Sheriff spoke to the two men in a conversational voice not audible to most of the demonstrators (R. 38, 57). He told them they would be subject to arrest for trespass if they did not leave. "I asked these boys if they would get with the group and ask them to leave the property." Petitioner Blue did not try to disperse the group (R. 30).

Sheriff Joyce then said "I'm going to give you boys about 10 minutes to discuss it between yourselves and if at that time you have not left, I am going to have to take action." He went towards the steps, "waited 8 to 10 minutes", and then made two announcements "to the entire group": first, they would be arrested if they did not leave the jail; second, "if they offered any resistance in any form or manner if I placed them under arrest . . . there would be an added charge of resisting arrest" (R. 31-32). Sheriff Joyce testified that he told the demonstators they would be arrested for trespassing if they didn't leave and that "any resistance to arrest would constitute an additional charge against . . . [t]hose so resisting . . .", telling the group "all of that at the same time" (R. 39).

Sheriff Joyce further testified that some of those who were standing sat down at his announcement (R. 31); he waited "a minute or two". When "they made no effort whatsoever to leave", he placed the group under arrest and ordered the officers to take them into custody (R. 32). There were 30 or 40 deputy sheriffs, highway patrolmen and city police officers at the scene (R. 34-35). The Sheriff later testified he gave the demonstrators "a minute or two or three" and that it was at most "four minutes" between his general announcement and the group arrests (R. 39-40). The Sheriff admitted that he didn't give those on the outskirts of this crowd or back a few rows "very long" because when some started sitting down he "realized what their answer was" to his dispersal order. The Sheriff "could not say" which demonstrators sat down or remained standing, nor whether the sitters were in the front or back (R. 40). When arrested, the group quietly marched into the jail basement without resistance or violence of any kind. According to Sheriff Joyce, "onlookers" on the sidewalks were not arrested, nor were persons who made any effort to turn and leave. He was, however, not sure how many demonstrators were arrested as one person counted 96, one counted 106, and "later the record reflected, I believe, 107" (R. 32).

Petitioner Walls testified that she was near petitioner Blue and White when she saw the Sheriff talking to them, but could not hear the conversation "at all" (R. 57). When the Sheriff finally addressed the whole group, he "asked us to disperse within 5 minutes" or be arrested. His deputies and police officers, who "were standing apart" before the Sheriff's announcement to the entire group, "as he said it and after 5 minutes were up, . . . just closed in" (R. 58). They also arrested sev-

eral demonstrators who were standing on the public sidewalks and brought them "into the group" (R. 58-59).

Petitioner Mays testified that she didn't "have a choice really" when the Sheriff made his announcements to the group, as she would be arrested for trespass if she remained, and she could not leave without resisting arrest by the officers surrounding her, one of whom was touching her left arm (R. 62).

Petitioner Wright testified that she was on the sidewalk behind the students when she heard the Sheriff's announcement; she immediately tried to leave, and was arrested anyway (R. 63-65):

> "I . . . stood up . . . and he [an officer] was standing behind me all the time and he caught me by the arm, my right arm, and took me like this and said 'this way.' So what could I do but go that way?" (R. 65).

She stated that it took her "about a minute" to pick up the sweater she was sitting on before standing (R. 64), i.e., a minute between the Sheriff's announcement and her arrest.

Sheriff Joyce and Deputy Sheriff Dawkins testified that some of the demonstrators (whom they could not identify) said they wanted to go to jail (R. 32, 46). Petitioners Wall, Mays and Wright all testified to the effect that they went to the jail as a form of peaceful protest and not to get arrested (R. 52, 62, 64).

Several trial court rulings may be briefly noted. Prior

to selection of the jurors, the trial judge informed the Jury Panel that in his opinion the case concerned trespass only: "This is not a segregation case . . . there's no attempt . . . to integrate anything" (R. 6). At the conclusion of the presentation of all evidence, the trial court denied defendants' requested charges involving their Constitutional rights of peaceful protest (R. 68-69, and particularly defendants' requested Charge No. 6).

Defendants' Motion for Mistrial based on the fact that "the so-called white restrooms of white men and white ladies were locked" at the afternoon trial session was withdrawn when the trial judge determined a writ of mandamus was not necessary as he did have power to ask the Sheriff to order the custodian to "open up the rooms and continue the recess where everybody can enjoy themselves" (R. 66-68).

ARGUMENT

Preface

Respondent-State of Florida chose to file no Brief in Opposition to the Petition for a Writ of Certiorari herein within the time allowed by the rules, but did file an untimely Response (mailed to petitioners on January 12, 1966) upon this Court's request for such "on or before December 22, 1965."

Petitioners shall not repeat the material contained in their Petition herein, but shall instead incorporate it by reference while refuting the fallacies in the Response. Section numbers of the Argument which follows correspond directly to those in the Petition's "Reasons for

Allowance of Writ" (P. 9, 14, 15) and in the Response's "Argument" (RP. 4, 7, 8). All facts noted in the Argument herein are set forth with record citations in the Summary of Evidence, **supra.**

The case at bar does not involve an isolated protest at the Leon County jailhouse on September 16, 1963. The demonstration in question was part of a concerted and continuing effort by interested citizens to secure freedom from racial discrimination in state institutions and in private places of public accommodation. The demonstrations started over a year **before** passage of the Civil Rights Act of 1964. In **Tallahassee Theatres, Inc. v. Due,** Leon County Circuit Court 1963, 22 Fla. Supp. 55, appeal dismissed, 160 So. 2d 169, the movie theatre operators sought to restrain picketing of their downtown Tallahassee theatres. Judge Willis' "Summary final decree" set forth the demonstrations and picketing to end racial discrimination conducted by a Florida A & M student group as well as "a large number of other persons" and noted his temporary restraining order of May 29, 1963, supplemental enforcement order of May 30 and modification order of May 31, 1963. He also noted contempt proceedings arising out of these orders. Judge Willis' December 5, 1963 "Summary final decree" entered a permanent injunction barring all "unreasonable picketing" and setting forth conditions concerning the number of persons, space between them, etc. In attempting to render "a proper blending of the rights of the parties," Judge Willis balanced what he deemed the theatre operators' right to discriminate on the basis of race against the defendants' right to exercise free speech and assembly to protest such racial discrimination. Judge Willis conceded that "the record in this case would tend

to show that it has been the practice of the plaintiffs to refuse to admit Negroes who sought admission to the theatre" (at p. 58).

In **Due v. Tallahassee Theatres, Inc.**, 5th Cir. 1964, 333 F. 2d 630, the United States Court of Appeals for the Fifth Circuit reversed the dismissal of "a civil rights complaint . . . as against the two theatre corporations and their managers, and as against city officials and the City of Tallahassee and . . . **W. P. Joyce, Sheriff of Leon County, Florida** . . . for conspiracy to deny plaintiffs and the class they represented civil rights asserted under Sections 1981, 1982, 1983 and 1985, Title 42, United States Code Annotated" by, under color of law, requiring Tallahassee white persons to conduct their private businesses on a racially discriminatory basis and requiring peace officers to prevent peaceful protests and arrest Negroes seeking service on a desegregated basis (at p. 631). The Court of Appeals reversed the District Court and upheld the complaint as stating a cause of action under the old Civil Rights Acts: the opinion bears the date June 26, 1964 and the 1964 Civil Rights Act bears the date July 2, 1964). The opinion noted that Sheriff Joyce has no legal immunity from injunction where "it is alleged that the Sheriff exceeds his duty to carry out the state court order or that the state court order itself is void" and that "the depositions taken by the Sheriff produced testimony to support the contentions" that he did invade appellants' constitutional rights (at pp. 632-633). The appellate court also noted deposition testimony in support of the complaint's allegations of police brutality in connection with the peaceful demonstrations to desegregate the movie theatres (at p. 633).

Petitioners contend that the reasonableness of the September 16, 1963 peaceful demonstration involved in the instant case is particularly clear when the case is properly placed in context of the Tallahassee situation prevailing at that time.

I

PETITIONERS' CONVICTIONS VIOLATE THEIR CONSTITUTIONAL RIGHTS TO FREEDOM OF SPEECH, ASSEMBLY AND PETITION.

The Petition (p. 9-14) describes the striking similarities between the case at bar, **Edwards v. South Carolina**, 1963, 372 U. S. 229, 83 S. Ct. 680, 9 L. Ed. 2d 697 and the recent **Cox v. Louisiana** cases, 1965, 379 U.S. 536 and 559, 85 S. Ct. 453 and 476, 13 L. Ed. 2d 471 and 487. The **Edwards** and **Cox** cases are controlling as they prohibit criminal liability for exercising constitutional rights of free speech, assembly and petition under circumstances comparable to those existing in the case at bar. Respondent's "endeavor" to distinguish the **Edwards** and **Cox** cases is peculiarly unsuccessful (RP. 4).

Respondent refers to the Florida constitutional and statutory laws cited by petitioners (P. 10) as "what some might consider to be discriminatory excesses" and finds it "interesting to note that they stand as valid law at this writing, petitioners' protestations to the contrary withstanding" (RP. 4). In other words, respondent—State of Florida explicitly defends as "valid law" Florida constitutional and statutory provisions requiring separate schools for white and Negro children, segregated facilities in

railroads and other common carriers, no marriage or adultery or habitual cohabitation between white and Negro persons, and segregated prisons! Not only does respondent ignore this Court's decisions including **Brown v. Board of Education**, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (re schools) & **Gayle v. Browder**, 1956, 352 U.S. 903, 77 S.Ct. 145, 1 L.Ed. 2d 1114 (re transportation), apparently seeking at this late date to rejuvenate the "ad hoc basis" specious argument (cf. RP. 6), but respondent also ignores decisions specifically invalidating some of the Florida laws involved, i.e. **Gibson v. Board of Public Instruction of Dade County, Fla.**, 5th Cir. 1959, 272 F. 2d 763 (holding unconstitutional Florida's school segregation laws) and **McLaughlin v. State of Florida**, 1964, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed. 2d 222 (holding unconstitutional Florida's criminal statute prohibiting interracial illicit cohabitation). Suffice to say that the Response itself clearly reveals the relevant attitude of the State in which the peaceful demonstration involved took place.

Respondent's second and last attempt to distinguish the **Edwards** case consist of its inability to see the relevance of the "void for vagueness" holding therein to the case at bar. In **Edwards**, this Court held that the common-law breach of peace crime involved was void for vagueness as construed and applied since it permitted the infringement of constitutional rights to freedom of expression; this Court quoted appropriate language from **Stromberg v. California**, 1931, 283 U.S. 359, 369, 51 S. Ct. 532, 75 L.Ed. 1117. Petitioners herein assert that the trespass - committed-with-a-malicious-and-mischevous-intent statute, as construed and applied, violated their rights to freedom of expression and equal protection of

the laws as guaranteed by the Federal Constitution and is consequently void for vagueness.

As far as the Cox cases are concerned, respondent relies on the fact that the Cox "demonstration took place across the street over 100 feet from the building in question" (RP. 5), whereas in the case at bar the "demonstrators stopped just short of entering the jail" (RP. 6). In both cases, the demonstrators stayed where the police officer told them to stay, the (Cox) 200 demonstrators across the street from the Courthouse and the 250 demonstrators (in the case at bar) in the driveway. The Cox cases are not distinguishable. The demonstrators in the case at bar stayed at the middle of the driveway after Deputy Sheriff Dekle advised them that they could not block the jail entrance and asked them to go there; Deputy Sheriff Dekle was "satisfied" when Petitioners went to this location and he testified that they did not come closer to the jail afterwards. Petitioners submit that no evidence appears in the Record to the effect that they ever intended or ever attempted to enter the jail. Respondent, indeed, states as follows later in its Response (RP. 8):

> "We agree that the only trespass was that upon the county property adjacent to the county jail proper. None of petitioners invaded the jail or any of its out-buildings. It seems clear that the trespass was committed entirely upon access routes and the adjacent lawns, approaches, walkways and other proximate areas."

Respondent also miscites the Record in asserting that a service truck operator was prevented from leaving in

his truck; no testimony at trial tended to establish that anyone who wished to enter or leave the jail was prevented from doing so by the demonstrators. Sheriff Joyce as well as Deputy Sheriff Dekle testified that the demonstrators moved back upon request.

Respondent unjustifiably relies on the alleged fact that Sheriff Joyce gave no "tacit permission" to remain near the jailhouse. Respondent omits any reference to the **explicit permission** given by Deputy Sheriff Dekle, i.e., the fact that the demonstrators obeyed his request as an officer of the county that they stay in the middle of the driveway and come no closer to the jail, and respondent totally ignores petitioners' obedience to the Sheriff's request that they move back. Respondent also overlooks Sheriff Joyce's 13 to 20 minute implied grant of permission to the demonstrators prior to his first announcements to the entire group, announcements which the evidence shows placed petitioners on the horns of a dilemma; i.e., being arrested for trespass or being arrested for resisting arrest!

Lastly, respondent contends that "the location of the county jail itself . . . clearly shows that their [petitioners'] demonstration was not calculated to reach either the hearts or souls of any respectable portion of the citizenry." (RP. 7) Would not the "respectable portion of the citizenry," to use respondent's language, read or hear of a peaceful public protest against jail segregation, discrimination in the Tallahassee theatres, and other State racial discrimination? Does not the "respectable portion of the citizenry" have access to radio, television, newspapers, word-of-mouth communication, etc., or are civil rights demonstrations excluded from com-

munication media? Are accused persons awaiting trial not "respectable?" Has the fundamental rule of "innocent until proven guilty" been abolished in Florida? Are all persons convicted of any and all crimes under any and all circumstances not "respectable?" Are persons improperly convicted or unconstitutionally convicted not "respectable?" Are Sheriff Joyce and his deputies not "respectable"?

Petitioners submit that the area chosen for the peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate because (1) petitioners believed that the persons arrested the day before for peacefully protesting the racially discriminatory movie theatre admissions policy were incarcerated in the Leon County jail, as apparently some were, and (2) the jail itself was and is a prime example of State-enforced racial segregation under State law in a public facility. To counsel's best knowledge, the first case in Florida holding racially segregated jails in accordance with Florida Statutes secs. 945.05-954.08 unconstitutional is **Ferguson v. Buchanan as Sheriff of Dade County**, unreported, Case #64-107, U. S. District Court for the Southern District of Florida, Miami Division, in which the Summary Decree was filed on March 16, 1965. Compliance with the Decree by total desegregation of the Dade County jail was acknowledged by plaintiffs in the **Ferguson** case file as of November 15, 1965, over two years after the demonstration involved in the case at bar.

II.

THE DOCTRINE OF ABATEMENT IS APPLICABLE TO PETITIONERS' CONVICTIONS

The Petition (P. 14) relies on Hamm v. City of Rock Hill, 1964, 379 U. S. 306, 85 S. Ct. 384, 13 L. Ed. 2d 300, Blow v. North Carolina, 1965, 379 U. S. 684, 85 S.Ct. 635, 13 L. Ed. 2d 603, and McKinnie v. Tennessee, 1965, 380 U. S. 449, 85 S. Ct. 1101, 14 L. Ed. 2d 151, as rendering the doctrine of abatement applicable to the convictions herein sought to be reversed.

Respondent tries to distinguish the Hamm case on the ground that "a jail is not a place of public accommodation . . . covered by the 1964 Civil Rights Act" (RP. 14). Petitioners do not contend that it is. The Tallahassee downtown movie theatres, however, are places of public accommodation covered by the Act and petitioners' demonstration was part and parcel of an attempt to peacefully desegregate said theatres by picketing. One purpose of petitioners' demonstration was to peacefully protest the prior arrest of fellow demonstrators who had unsuccessfully sought admission to said theatres free from racial discrimination.

III.

PETTY CRIMINAL STATUTES MAY NOT BE USED TO VIOLATE MINORITIES' CONSTITUTIONAL RIGHTS

The Petition (P. 14-15) cites numerous cases in which this Court has prescribed the uses of petty criminal statutes for the purpose of violating minorities' constitutional rights, including the Edwards and Cox cases supra, Peterson v. Greenville, 1963, 375 U. S. 244, 83 S. Ct. 1119, 10 L. Ed. 2d 323, and Thompson v. Louisville, 1960, 362 U. S. 199, 80 S. Ct. 624, 4 L. Ed. 2d 654. As respondent made no argu-

ment on this point (RP. 8) additional to its fallacious ones already discussed by petitioners in sections I and II, supra, suffice to state that the Summary of Evidence and Preface herein clearly establish the unconstitutional purpose of petitioners' arrests and convictions.

IV.

PETITIONERS' CONVICTIONS ARE BASED ON A TOTAL LACK OF RELEVANT EVIDENCE

The Petition (P. 15) set forth petitioners' contention that their convictions violated the Fourteenth Amendment's due process clause as no evidence whatsoever of "trespass . . . committed with a malicious and mischievous intent" appears in the Record.

Respondent urges that the total-lack-of-relevant-evidence rule of Garner v. Louisiana, 1961, 368 U. S. 157, 82 S. Ct. 248, 7 L. Ed. 2d 207, is inapplicable in the case at bar because Sheriff Joyce subsequently notified petitioners that their refusal to leave "would result in their arrest and prosecution for trespass" (RP. 9). Respondent thus concedes that "it may be correct to say that the property upon which Petitioners conducted their alleged protest was open to the public" (RP. 9), but again ignores Deputy Sheriff Dekle's original grant of permission to demonstrate up to the middle of driveway and relies on the Sheriff's withdrawal of prior permission to establish trespass. The Cox case, supra, 13 L. Ed. 2d at 496, 497 reveals the constitutional inability of such evidence to establish trespass.

With reference to the second requirement of the trespass statute involved, respondent states that the requisite malicious-and-mischievous-intent is evidenced by "the intentional doing of an act (in this case trespass) without just cause or excuse" (RP. 10). Assuming arguendo that the evidence in the case at bar establishes an intentional trespass, contrary to petitioners' position, it seems clear that petitioners did not act "without just cause or excuse" in view of state-enforced segregation in the downtown movie theatres as well as the jail itself, the fact that some demonstrators arrested the prior day were being kept inside the jail, the peaceful and orderly nature of petitioners' demonstration, the police officer's original grant of permission to demonstrate to the middle of the driveway, petitioners' obedience in going no further than the point designated in such grant of permission, etc.

Respondent states that "petitioners urge that public property is at their unbridled disposal as a forum to air grievances" (RP. 10). Petitioners take this opportunity to completely disavow any such position. The jail itself is on public property and petitioners neither intended nor attempted to go into the jail. Petitioners merely intended and attempted to use public property "open to the public" for peaceful freedom of expression. Respondent itself concedes that the areas involved, adjacent to the jail, appeared to be so "open to the public" and were so "open to the public," at least until Sheriff Joyce revoked the prior grant of permission to demonstrate (a revocation petitioners deem ineffective). The case at bar in no way involves "civil disobedience" in the sense of a deliberate violation of law. Petitioners sought to peacefully demonstrate by walking to the jail and then standing near it, singing Freedom songs, clapping their hands, etc. Peti-

tioners did not seek to demonstrate by deliberately violating a law.

The demonstration in question took place over two years ago. Those two years have seen the passage of the 1964 Civil Rights Act and an end to state-enforced or encouraged racial discrimination in some instances in some parts of the State of Florida. Respondent's Response indicates that the battle is not yet over. Petitioners submit that the demonstration in the case at bar was more than reasonable under the circumstances then prevailing, was thus constitutionally-protected freedom of expression, and in no way evidenced any trespass-with-a-malicious-and-mischievous intent.

CONCLUSION

WHEREFORE, for the reasons hereinabove stated, it is respectfully submitted that the judgments below should be reversed and Petitioners' convictions vacated.

Respectfully submitted,

By: _____

RICHARD YALE FEDER
250 N. E. 17th Terrace
Miami, Florida 33132

TOBIAS SIMON
c/o A.C.L.U. of Florida
223 S. E. 1st Street
Miami, Florida 33131
Attorneys for Petitioners

IRMA ROBBINS FEDER
110 N. Hibiscus Drive
Miami Beach, Florida 33139

JOSEPH C. SEGOR
395 N. W. 1st Street
Miami, Florida
Of Counsel

CERTIFICATE OF SERVICE

I, RICHARD YALE FEDER, Counsel for Petitioners and a member of the Bar of the Supreme Court of the United States, hereby certify that on August ____, 1966, I served copies of the foregoing Brief for Petitioners on the Respondent by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to each of the following, to wit, WILLIAM D. ROTH, Assistant Attorney General of the State of Florida, P.O. Box AQ, 1105 East Memorial Boulevard, Lakeland, Florida 33802, WILLIAM D. HOPKINS, State Attorney, Attorney for Respondent, Lewis Bank Building, Tallahassee, Florida, and EARL FAIRCLOTH, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida.

RICHARD YALE FEDER
250 N. E. 17th Terrace
Miami, Florida 33132
Attorney for Petitioners